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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

VERONICA T. DAVIS,

Petitioner,

v.

BAPTIST MEMORIAL HOSPITAL SYSTEM
D/B/A
BAPTIST MEDICAL CENTER HOSPITAL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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39 pp

QUESTIONS PRESENTED

1. If petitioner's appeal was untimely and therefore should have been dismissed by Fifth Circuit?

2. If petitioner was entiled to file motion to reconsider judgement rendered that denied equitable relief under Title VII?

3. If respondent's appeal filed during the pendency of petitioner's motion to reconsider was void because disposition of motion had not yet occurred?

4. If the decision to dismiss petitioner's appeal by Fifth Circuit inconsistent to it's previous rulings to cases simularly situated, and inconsistent to previous judgements of its sister circuits?

6. If District Courts judgements rendered in this case concerning recovery of damages for injuries sustained were issued in conformity to the guidelines set out by Congressional and Legislative bodies under Title VII?

7. If the decision to deny recovery of damages under Title VII, inconsistent to District Court's previous judgements to cases simularily situated and inconsistent to previous judgements of it's sister districts?

8. If petitioner is entitled to recovery of damages for injuries sustained for violations under Title VII?

9. If District Court and Circuit Court displayed any prejudices towards the petitioner because of her pro se status?

10. If District Court and Circuit Court maintained its impartiality throughout all proceedings connected to this case?

11. If "color of the law" tactics displayed by the court system to deprive an individual of federal rights , existed?

12. If petitioner recieved the equal rights quaranteed her by the Constitution to the United States?

PARTIES TO THE PROCEEDING

Petitioner, Veronica T. Davis, proceeding pro se, prays for a Writ of Certiorari issued to review judgements of the United States Court of Appeals, for the Fifth Circuit, New Orleans, and the United States District Court, for the Western District of Texas, San Antonio Division.

The respondent, Baptist Memorial Hospital System d/b/a Baptist Medical Center Hospital, located at 111 Dallas Street, San Antonio, Texas 78205.

RULE 29(6) List

Petitioner has no parent companies or subsidiaries to disclose pursuant to Rule 29(6) of the Rules of the Supreme Court.

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CITATION OF OPINIONS BELOW

The rulings of the district court and the circuit court as it pertains to this case have not been reported to date, and is included within Appendix A and Appendix B, for the petitioner, commencing at page 21a.

STATEMENT OF JURISDICTION

The judgement of the United States Court of Appeals for the Fifth Circuit was entered on Jan. 9, 1998. The jurisdiction of this Court is invoked pursuant to Section 1254(1)(a) 28 United States Code, and 28 United States Code §§ 1251.

The Judgement of the United States District Court was entered on May 12, 1997. The jurisdiction of this Court is invoked pursuant to Section 1291 and 1292 of 28 United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title VII of the Civil Rights Act of 1964, as amended, 42 United States Code § 2000 sec. 1440, 1442, 1445, 1446, 1448, 1449, and 1452,

The Fourteenth Amendment to the United States Constitution regarding due process of the laws, equal protection of those laws, equal benefit of those laws and equal access to all levels of the courts.

> "Congress' purpose in vesting broad equitable powers in district courts under these subchapters was to make possible fashioning the most complete relief possible and the courts have not merely the power but the duty to render a decree which will so far as possible eliminate the effects of past discrimination as well as bar like discrimination in the future".

STATEMENT OF THE CASE

I. PROCEDURAL BACKGROUND

Action filed in federal district court, pro se, pursuant Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, and various state claims against Baptist Memorial Hospital System D/B/A Baptist Medical Center Hospital, seeking recovery of damages sustained as a result of illegal discrimination based on race, to include compensatory and punitive damages, backpay, pecuniary damages, past and future, and reinstatement to position, or in lieu of reinstatement, front pay.

Pendent state claims dismissed by the court, and action allowed to proceed to trial on the merits by the court, under Title VII.

Agreed Pre-Trial Order formulated by the parties and bifurcated trial requested by the plaintiff to separate trial to first dertermine the liability of the defendant and then the damages of the plaintiff. Agreed pre-trial order filed and request request for bifurcated trial denied. (see Appendix B-1).

Parties ordered to mediation deemed unsucessful. First trial setting of this case was on May 8, 1995. During plaintiff's opening statement Honorable Senior District Judge D.W. Suttle, declared a mistrial and recused himself from this case on the grounds that his impartiality might be reasonable questioned, and returned this case to the district clerk's office for reassignment. (see Appendix B-2).

Honorable United States District Judge H.F. Garcia was assigned to this case. On the Court's own motion, he revived a previous order for an appointed attorney, and assigned Gerald McFarlen to present case to court and jury, commencing on October 16, 1995.

Jury trial held before seven (7) non-black members and unanimously found in favor of the plaintiff, and in addition to original claims found that the defendant's behavior was deliver- against the plaintiff with malice, recklessness, and showing a total disregard to her federally protected rights.

The jury of seven (7) non-black persons rendered an award that was clearly inadequate consisting of punitive damages only in the amount of $15,000. In accordance with the award of the jury, the court entered a judgement in favor of the plaintiff in that amount. (see Appendix B-3).

Both parties timely filed post-trial motions, the plaintiff seeking to invoke the court's discretionary powers and formulate a make whole remedy consistent with the intentions of Congressional and Legislative bodies concerning injured victims under Title VII, to formulate a decree that would so far as possible, repair past injuries of the victim, and bar like in the future. Additional plaintiff sought attorneys' fees. The defendant sought a new trial on the issues. All motions filed on November 13, 1995.

The court denied all parties post-trial motions, (see Appendix B-4), save the plaintiff's motion for attorneys' fees, which was addressed under separate order (see Appendix B-5). The judgements of said motions were entered by the court on March 28, 1996.

On April 8, 1996, plaintiff timely filed reconsideration motion for equitable considerations under Title VII. In the interium of plaintiff's pending reconsideration motion, the defendant filed notice of appeal on April 11, 1996 and a stay of execution of punitive judgement. The Court ruled upon the stay of execution and reconsideration motion on April 30, 1996. Plaintiff timely filed notice of appeal on May 8, 1996. All fees paid. (see Appendix B-6).

In Fifth Circuit, defendant sought to dismiss plaintiff's Appeal on the grounds of being untimely. Fifth Circuit granted the defendant's motion to dismiss. (see Appendix A-1). Plaintiff sought reconsideration of dismissal order. Fifth Circuit denied motion to reconsider. (see Appendix A-2), Dec. 9, 1996.

Fifth Circuit, after granting a order of extension to file appellant brief, dismissed the defendant's appeal for "want of prosecution", on Dec. 9, 1996.

On Jan. 2, 1997, plaintiff sought in the district court to reopen case for further proceeding, a hearing to present oral arguments pertaining to damages, and to vacate stay of execu-

tion to punitive damage award. The court denied plaintiff's motions on May 12, 1997. (see Appendix B-7). Plaintiff timely filed a notice of appeal on June 10, 1997. Brief's filed in connection to plaintiff's appeal. On Jan. 9, 1998, Fifth Circuit, dismissed plaintiff's appeal without discretionary review upon the merits. (see Appendix A-3).

II. STATEMENT OF FACTS

1. Plaintiff prevailed in jury trial on claims connected to Title VII, based on race.

2. Once a violation is established, plaintiff is entitled to recover for injuries sustained as a result of illegal violations.

3. The punitive damage award issued by the 7 non-black jurors in this case was clearly inadequate for the injuries sustained by the plaintiff in the loss of income of not less than $16,000, per year, her $60.000 home, 90% of her personal possessions, and the hardship created by being blacklisted from comparative employment in her field, the fact that she had to move from her place of livelyhood and seek employment in another city, also to mention the benefits of employment to include unemployment insurance, life insurance and savings plans, presented to the court, without contradiction.

4. District court has a duty under Congressional and Legislative guidelines to fashion a remedy that would as far as possible, "make the plaintiff whole" for injuries sustained.

5. District court has not attempted to formulate a make whole judgement in this case, and compensate for injuries.

6. District Court and Circuit Court have been extremely rigid towards the plaintiff, and has not expressed the grounds upon which its judgements are made against her, and have not explained why she is not entitled to recovery as are all others simularily situated to her, are entitled.

7. Previous judgement rendered in previous cases of both the district court and circuit court of this jurisdiction have been comparatively different to those made by these same courts concerning the plaintiff.

8. All steps to completion of this lawsuit have followed by plaintiff, 85% pro se, and the courts have not afforded her any lattitude, and have been the plaintiff's only barrier to complete recovery of injuries sustained is the courts itself.

9. The plaintiff's last resort to justice is through a Writ of Certiorari.

RELEVANT COURT RULINGS OF SISTER DISTRICT AND CIRCUIT COURTS

I. In order to determine if plaintiff's appeal was filed timely, it is necessary to examine the legal chain of events of the issues plaintiff sought judgement relief upon by the district court, the right of the plaintiff to seek reconsideration to the judgement rendered upon it's denial, and then the plaintiff's right to appeal to the denial of relief sought.

1. Placed before the jury by the district court: issues of liability of the defendant; compensatory, punitive damages, and back pay awards.

2. Post-trial relief sought: filed Nov. 13, 1995: Pursuant to pre-trial order stipulations and undisputed evidence at trial, and the great weight of the evidence presented; backpay awards. (filed by the plaintiff's attorney appointed).

3. Post-trial relief sought: filed Nov. 13, 1995: Pursuant to 42 U.S.C. 2000e-5(k), attorney fees by both plaintiff and appointed attorney.

4. Post-trial relief sought: filed Nov. 13, 1995: Pursuant to Section 706(g) under Title VII, backpay and front pay awards: (front pay issues raised for the first time on this date), filed by the plaintiff.

5. Post-trial oppositions to all issues filed by the defendants.

6. Court denied all post-trial motions, save the award of attorneys' fees on March 28, 1996.

7. Timely Rule 59 motion filed by plaintiff to district court to reconsider denial of front pay awards filed April 8, 1996.

8. Notice of Appeal filed on April 11, 1996, during the pendency of plaintiff's Rule 59 motion.

9. Response in opposition to plaintiff's Rule 59 motion for reconsideration filed April 17, 1996.

10. Denial of plaintiff's Rule 59 motion for reconsideration of front pay awards on April 30, 1996.

11. Notice of Appeal filed timely to denial of Rule 59 motion by district court, for reconsideration.

12. Fifth Circuit dismissed plaintiff's appeal as untimely on Aug. 13, 1996.

II. FIFTH CIRCUIT AND SISTER CIRCUIT DECISION COMPARATIVELY DIFFERENT OF PREVIOUS CASES UNDER SIMILAR CIRCUMSTANCES.

In Trowel Trades Employees Health & Welfare Trust Fund v Edward L. Nezelek, Inc. (1981, CA 5 Fla) 645 F2d 322, 2 EBC 1685, 107 BNA LRRM 2919, 91 CCH LC ¶ 12764, 31 FR Serv 2d 857, held that any party is afforded one opportunity to seek of the court to re-examine its final judgements (see Rules of Appellate Procedure, Rule 4a). The district court rejected plaintiff's argument that the defendant company's motion for rehearing after a second judgement did not toll the time for filing an appeal... the Fifth Circuit concluded that since the company's notice of appeal had been filed within the 30 days as required of the district court's denial of reconsideration motion, the appeal was timely.

In Fabian v Reed (1983 CA 5 Miss) 707 F2d 147, 36 FR Serv 2d 815, later app (CA 5 Miss) 714 F2d 39, an appeal by a state prisoner from dismissal of his petition for federal habeas corpus relief, where within 10 days of district court's entry of judgement, prisoner submitted a letter to district court that contained his objections to judgement of dismissal. District court treated letter as motion to reconsider and denied such. Motion to reconsider tolled the time for appeal, and thus an appeal filed within 30 days of a motion to reconsider, was timely filed under Rule 4(a)(4).

* where notices of appeal filed before disposition of motion:

In Fentron Industries, Inc. v National Shopmen Pension Fund (1982, CA 9 Wash) 674 F2d 1300, 3 EBC 1323, 94 CCH LC ¶ 13559, 34 FR Serv 2d 281, supra § 6[a]. The court held that where notices of appeal were filed before and after a timely motion to reconsider was filed, motions to reconsider suspended the time for filing a notice of appeal for all parties until after the disposition of said motion, and the second notice of appeal was effective.

In Lapeyrouse v Texaco, Inc. (1982, CA 5 Tex) 670 F2d 503, 33 FR Serv 2d 1062, later app (CA 5 Tex) 693 F2d 581, 35 FR Serv 2d 878, as to a motion for findings of fact and conclusions of law, filed within 10 days of entry of judgement, the appellate court lacked authority to consider appeal if the post-trial motion was timely filed, and if district court had not ruled on motion until after filing of notice of appeal. This case was remanded back to the district court for determination of timeliness of motion for rehearing.

In Lenard v Argento (1983, CA 7 Ill) 699 F2d 874, cert den (US) 78 L Ed 2d 84, 104 S Ct 69 and (disapproved on other grounds Hensley v Eckerhart, 461 US 424, 76 L Ed 2d 40, 103 S Ct 1933, 31 BNA FEP Cas 1169, 32 CCH EPD ¶ 33618) as stated in Marybeth G. v Chicargo (CA 7 Ill) 723 F2d 1263, on remand (ND Ill) 585 F Supp 813, the court held that for purposes of Rule 4(a), a motion to reconsider qualifies as a Rule 59 motion and thus timely filed motion to reconsider postpones running time for appeal. In a memorandum opinion at the conclusion of trial of said case, the district court ruled that each party had prevailed to some extent, and denied each parties request for attorneys' fees. District court, sua sponte, reconsidered motion for attorneys' fees, granting plaintiff an award of attorneys' fees in the amount of $180,500, and denying defendant's motion for attorneys' fees. Defendant made a new motion to reconsider the award, pointing out that attorneys' had entered into stipulation agreements concerning fees, the court reconsidered and modified judgement to $120,000. Defendants then filed notice of appeal to all orders of the district court related to attorneys' fees and costs. Three (3) days later plaintiff filed timely motion to reconsider the reduction of fees.

District court vacated reduction, and reinstated original amount. On appeal, defendants argued district court did not have jurisdiction to reconsider since they had already filed notice of appeal. The appellate court concluded district court had had jurisdiction to consider timely filed motion to reconsider its opinion.

In Delgado v McTighe (1981, ED Pa) 522 F Supp 886, plaintiff sought redress for violations under 42 USCS §§ 1981 and 1983. Court entered findings of fact and conclusions of law. Plaintiff sought reconsiderations to such within 10 days. Plaintiff then filed notice of appeal within 2 weeks of filing motion to reconsider. The court noted that generally, filing notice of appeal immediately transfered jurisdiction of a case to the appellate court. The court further noted that Rule 4(a)4 provides that a notice of appeal filed before the disposition of a Rule 59 motion shall have no effect. The court accordingly was allowed to reconsider its findings.

In Williams v Bolger (1980, CA 5 Ga) 633 F2d 410, 30 FR Serv 2d 1417, plaintiff suing goverment, had 60 days to file a notice of appeal of summary judgement granted to the defendants. Before that time instead, plaintiff filed Rule 60 motion to vacate judgement, which motion was denied. Then plaintiff asked the district court to reconsider said motion under Rule 59, rather than under Rule 60. While his motion to reconsider was pending, plaintiff filed notice of appeal from same denial. The Court of Appeals For the Fifth Circuit held that said motion filed within 10 days was timely and tolled the time for appeal **"triggered prohibition against the premature filing of notice of appeal"**. Since a notice of appeal from an order, which filed during the pendency of a F.R. C.P. Rule 59 motion to reconsider that order, was a nullity under Rule 4(a)4.

In O'Connor v Keller (1981, DC Md) 90 FRD 599, 32 FR Serv 2d 762, the court held that if plaintiff's motion for reconsideration were treated as a motion under Rule 59 of F.R.C.P., and it is timely filed, under Rule 4(a)4, notices of appeal filed during the pendency of the petition would have no effect, and new notices of appeal would have to be filed within the prescribed time to be filed measured from the entry of judgement disposing of said petition. To do otherwise would allow defendants to prevent a deci-

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sion during the pendency of the appeal, promote the possibility of piecemeal appeals and deprive the district court of an opportunity to rule on the petition while the merits of the parties positions and other aspects of the case could be readily recalled reasoned the court.

III. DISCUSSIONS REGARDING PLAINTIFF'S POSITION FOR APPEAL

The plaintiff in the present case, having requested of district court for the first time, consideration for front pay awards on Nov. 13, 1995, upon its denial, had the constitutional right to request of district court reconsideration of that denial, entered on March 28, 1996. Request for reconsideration was timely filed on April 8, 1996. Motion for reconsideration postponed any appeal to be filed by either party during its pendency.

Three (3) days after the plaintiff filed her motion to reconsider Rule 59 motion, the defendant filed a notice of appeal. Had the appellate court and the district court been consistent to its previous rulings to previous cases under simular circumstances then the defendant's notice of appeal would have been deemed ineffective during the pendency of plaintiff's Rule 59 motion, and that once the district court had ruled upon motion for reconsideration, then the defendant would have had to refile its notice of appeal within 30 days following the order of denial in order to have an effective appeal.

Instead in this particular case, the district court and circuit court made a mechanical inconsistent ruling and allowed the defendant's voided appeal to proceed forward, and dismissed plaintiff's legal appeal, according to its own previous rulings in previous cases. These actions were clearly inconsistent to its previous judgements regarding simular circumstances.

Because of the above stated reasons, plaintiff believes that her right to reconsideration of a judgement, and her right to appeal in the face of denial of that judgement has been trampled upon by the court system itself. Plaintiff's appeal was legal and properly filed within the prescribed time according to the F.R.C.P. and the Rules of Appellate Procedure. Defendants appeal at this time was void, but allowed to proceed by said courts illegally and eventually dismissed for want of prosecution. Plaintiff right to appeal was denied.

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Plaintiff was placed at a legal dilema; had she filed a notice of appeal during the pedency of her post-trial motion to reconsider front pay awards, and make whole remedies, then she would have divested the district court of the jurisdiction to decide said motion until after the completion of the appellate phase. In actuality and factually, the courts, both the district court and the appellate court, allowed the defendant to do just that, prevent a decision to be made by filing a notice of appeal during the pendency of a Rule 59 motion to reconsider, an action that under normal circumstances and in other simular related situations are frowned upon by both these courts, and are **not allowed** to happen according to previous rulings in other cases, but this, being allowed to occur is another of the many instances where the **impartiality of the courts regarding the plaintiff might be reasonably questioned.**

*** where other injured parties simularily situated have been "made whole" for injuries sustained by discrimination:**

The following cases are comparative instances in where sister districts and sister circuits have adhered to the guidelines of Title VII, and made injured parties of illegal discrimination in the course of employment whole without reservations:

In Williams v trans World Airlines, Inc., 507 F Supp 293, (1981, CA 8 Mo) 660 F2d 1267. Black stewardess brought action against airline, alleging discriminatory discharge based on race, black. U.S. District Court for the Western District of Missouri, entered judgement in favor of plaintiff, to include a judgement award in the amount of $1,912.90 for damages, $5,000 for attorneys' fees and cost. Plaintiff appealed on the inadequacy of damages due to failure of court to compensate her for mental distress and attorneys' fees award. Eighth Circuit, in conclusion, affirmed judgement as to attorneys' fees, and remanded case for determination of damages for mental distress. CA 8 further commented that:

> One of the purposes of a Title VII award is to make a person **"whole"** for injuries caused by illegal employment discrimination, and an award of compensatory damages for humiliation or emotional suffering is an appropiate remedy for deprivation of a constitutional right. Civil Rights Act of 1964 § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.

Limitation of compensatory damages award in a civil rights case as to out-of-pocket expenses, denying recovery for emotional distress and humiliation, has been held improper. Jeanty v Mckey & Poague, Inc., 496 F2d 1119, 1121 (7th Cir. 1974); see Herrera v Valentine, 653 F2d 1220 at 1227-28, 1230-31 (8th Cir. 1981); Smith v Anchor Bldg. Corp., 536 F2d 231, 236 (8th Cir. 1976); Gore v Turner, 563 F2d 159, 164 (5th Cir. 1977), Alicea Rosado v Garcia Santiago, 562 F2d 114, 121 (1st Cir. 1977); Seaton v Sky Realty Co., 491 F2d 634, 636-37 (7th Cir. 1974); Wright v Owen, 468 F Supp. 1115, 1118 (E.D. Mo. 1979); Shuman v Standard Oil Co., 453 F. Supp. 1150, 1154 (N.D. Cal. 1978); Aumiller v University of Delaware, 434 F. Supp. 1273, 1310 (D. Del. 1977); Miller v Doctor's General Hospital 76 F.R.D. 136, 142 (W.D. Okl. 1977).

In another case of Eighth Circuit, Block v R.H. Macy & Co., 712 F2d 1241 (1983). Former black employee brought action against R.H. Macy for discriminatory discharge in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C.A. § 1981. After a jury trial, the U.S. District Court for the Western District of Missouri entered judgement in favor of plaintiff, with a compensatory damage award in the amount of $20,000, back pay awards of $7,598, mental stress award of $12,000 and punitive damage award of $60,000. Defendant appealed and sought reduction of punitive award. CA 8 affirmed district court's judgement's and stated:

> The amount of punitive award lies in the discretion of the jury and may only be disturbed when it appears in the judgement of the reviewing court, to be unfair and shocking. Guzman v Western State Bank, 540 F2d 948, 954 (8th Cir. 1976). In light of this rule we find no basis for changing this amount.

In Yarbrough v Tower Oldsmobile, Inc., 789 F2d 508 (7th Cir. 1986), plaintiff brought suit under 42 U.S.C.A. § 1981, alleging discriminatory discharge on the basis of his race, black. After a jury trial, U.S. District Court for the Northern District of Illinois entered judgement in favor of the Plaintiff, and he was awarded compensatory damages in the amount of $29,000 and punitive damages in the amount of $7,500. Seventh Circuit affirmed judgement and in addition cited

This very important provision under 42 U.S.C.A. § 1981, that applies to all american citizens:

> All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, to be parties, give evidence, and to full and equal protection and benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

In Williamson v Handy Button Machine Co. 817 F2d 1290 (7th Cir. 1987), the U.S. District Court for the Northern District of Illinois, entered judgement in favor of the plaintiff, who brought suit alleging discrimination in employment based on her race, black, by keeping plaintiff in lowest paying job failing to promote her, despite of her entitlement by senority. The court entered an award of $10,000 for psycological disability and emotional pain, $130,000 for lost earnings, and the present cash value of the earnings certain to be lost in the future, $10,000 for medical expenses and $100,000 in punitive damges. Plaintiff also sought prejudgement interest, in which the court denied. The Seventh Circuit affirmed the award of $250,000 and vacated denial of prejudgement interest and remanded case back to district court for further proceedings perto prejudgement interest.

One important factor as to why the district court denied prejudgement as noted by the circuit court is a statement made by the district court: "The jury awarded too much money". The court concluded that that reason is reviewable and wrong.
This demostrates that the from district to district and from circuit to circuit are not always impartial towards a party, because every sole this in the world is ran by emotional humans.

In Rowlett, Sr. v Anheuser-Bush, Inc., 832 F2d 194 (1st Cir. 1987). Black employee filed action under 42 U.S.C.A § 1981, and 42 U.S.C.A. § 2000e, alleging racial discrimination in training, pay raises and discharge. The U.S. District Court for the District of New Hampshire entered judgement in favor of the plaintiff, and

a judgement award of $299,000 compensatory and $3,000,000 punitive damages. First Circuit affirmed the award of compensatory damages, and concluded that the amount of $3,000,000 was grossly excessive and would be reduced to $300,000, an award, consistent with the structures of Title VII.

Some important factors of this case is that the plaintiff proceeded pro se in this action. During the course procedure, pro se plaintiff inadvertently failed to timely move for jury trial. First Circuit concluded that district court had not abused its discretion in granting pro se plaintiff's untimely motion for jury trial where employer was not prejudiced by the grant, trial was not delayed or extented and there was no unfair surprise. She recieved lattitude.

Another important factor in this case is that the courts are alert to adjust grossly excessive awards, so to the fairness of, and compensation to parties injured by illegal action, this has to, in order to be constitutionally correct, mechanically work in the reverse when awards are grossly inadequate.

In Brown v Freedman Baking Co., Inc. 810 F2d 6 (1st Cir. 1987). Former managerial employee brought action against employer under 42 U.S.C. § 1988, alleging intentional infliction of emotional distress and defamation. This action was consolidated with civil rights suits brought by two former part time sales clerk employees of same company Tanya Brown and Donna Campfield, alleging discriminatory dis charge based on race. The U.S. District Court for District of Mass. entered judgement in favor of plaintiff's. Judgement awards are as follows:

DAMAGES	STEVEN BROWN	TONYA BROWN	CAMPFIELD
compensatory	$20,000	$3,600	$750
punitive	$50,000	$50,000	$50,000
emot. distress	$5,000	-0-	-0-
	AGAINST COMPANY		
compensatory	$5,000	$300	$50
punitive	$3,000	$3,000	$2,000
emot. distress	$5,000	-0-	-0-
	AGAINST ONE EMPLOYEE		
compensatory	-0-	$100	$200
punitive	-0-	$1,000	$1,000
	AGAINST ANOTHER		

District also entered judgements in this case to plaintiff's for awards of attorneys fees in the amount of $67,399.25 and costs in the amount of $2,277.19.

First Circuit affirmed damage awards pertaining to civil rights claims, however, the verdict and damage awards for emotional distress was vacated and remanded for adjustment of damages.

In the present case, the court elected to, even though the evidence revealed otherwise, dismissed with prejudice, the co-defendant parties joined to this lawsuit that were managetorial persons whose actions and or inactions gave rise to present lawsuit to exist in their official compacity.

In Hebling v Unclaimed Salvage & Freight Co., Inc., 489 F. Supp 956 (1980). Former employee brought action under Title VII of the Civil Rights Act of 1964 and 42 § U.S.C.A. 2000e alleging discrimination based on sex, alleging exclusion from promotion because of her sex. United States District Court for the Eastern District of Penn. entered judgement in favor of the plaintiff. In the interium, the store where plaintiff was assigned had closed, and so the position denied was no longer available, thus back pay alone was an appropiate remedy, running from the date she would have been promoted to the date the store closed, concluded the court and held that the remedial provisions of Title VII empower the court to exercise its equitable discretion to fashion the most complete relief possible "to make persons Whole for injuries suffered on account of unlawful employment discrimination." Franks v Bowman Transportation Co., Inc., 424 U.S. 747, 763, 96 S Ct. 1251, 1264, 47 L. Ed. 2d 444 (1976), quoting Albemarle Paper Co. v Moody, 422 U.S. 405, 95 S Ct. 2362, 45 L. Ed. 2d 280 (1975). In Title VII cases, where discrimination has been found, ".... [t]he injured party is to be placed, as near as may be in the situation he would have occupied if the wrong had not been committed." Albemarle Paper, supra, 422 U.S. at 418-419, 95 S Ct. at 2372.

In Gross v Exxon Office Systems Co., 747 F2d 885 (3rd Cir. 1984) Employee appealed from a judgement of U.S. District Court for the Eastern District of Penn.. Judgement entered in her favor in suit charging employer with sex discrimination in violation of Title VII, contending that judgement in her favor was inadequate. Plaintiff was awarded backpay in the amount of $78,424.23 and frontpay in lieu of reinstatement in the amount of $12,523.20. Third Circuit affirmed court's judgement and further noted that an award of future lost earnings in Title VII employment discrimination cases is an

is an alternative to traditional equitable remedies, Civil Rights Act of 1964 § 701 et seq., as amended, 42 U.S.C.A. § 2000e, choice of remedy awarding front pay in lieu of reinstatement order in Title VII employment discrimination cases rest in the sound discretion of the trial court. Trial court explained:

> I do not believe that either plaintiff or defendant would seriously contend that it would be sensible to order plaintiff reinstated to a job in which harmonious working relationships are so important after the acrimony this case has engendered, nor could I possibly draft an injunction order that would effectively make the existing ill feelings disappear. I will then consider the plaintiff's front pay claim.

In Booker, III v Taylor Milk Co., Inc., 64 F3d 860 (3rd Cir. 1995), discharged employee brought Title VII action against employer, alleging discriminatory discharged based on race, black. Judgement entered in favor of employee by the U.S. District Court for the Western District of Penn., and an award of back pay only. This case was affirmed in part and reversed in part. The third circuit further cited legal guidelines established by Congress in connection to this case as follows:

* If district court find that an employer engaged in unlawful employment discrimination practices, Title VII authorizes back pay award and front pay award is manifestation of Congress' intentions to make persons whole for injuries suffered through past discrimination. Civil Rights Act of 1964, § 706(g)(1), as amended, U.S.C.A. § 2000e-5(g)(1).

* Back pay authorized by Title VII is designed to restore victim of discrimination to the economic position he or she would have enjoyed absent the unlawful discrimination. Civil Rights of 1964, § 706(g)(1), as amended 42 U.S.C.A. § 2000e-5(g)(1).

* Title VII claimant did not wholly forfeit right to back pay by failing to mitigate damages to some extent and consequently, plainis entitled to back pay where it was necessary to make him whole; employer's "no mitigation-no back pay" argument was inconsistent to

the "make whole" purpose underlying Title VII. Civil Rights Act of 1964 § 706(g)(1), as amended, 42 U.S.C.A. § 2000e-5(g)(1).

* Court of Appeals would review for abuse of discretion district courts's back pay calculation under Title VII. Civil Rights Act of 1964, § 706(g)(1), as amended, 42 U.S.C.A. § 2000e-5(g)(1).

* If a district court finds that an employer has engaged in an unlawful employment practice, Title VII authorizes, inter alia, a back pay award. See 42 U.S.C. § 2000e-5(g)(1); see also Loeffler v Frank. 486 U.S. 549, 558, 108 S Ct. 1965, 1971, 100 L. Ed. 2d 549 (1988). As explained by the Loeffler court, the back pay award authorized by Title VII "is a manisfestation of Congress' intent to make 'persons whole for injuries suffered through past discrimination.'" Id. (quoting Albemarle Paper Co. v Moody, 422 U.S. 405, 421, 95 S Ct. 2362, 2373, 45 L. Ed. 2d 280 (1975)); see Squires v Bonser, 54 F.3d 168, 172 (3rd Cir. 1995).

In Hunter v Allis-Chambers Corp. Engine Div. 797 F.2d 1417 (7th Cir. 1986). Black employee brought suit under 42 U.S.C.A § 1981 and Title VII, alleging he was a victim of harrassment and was fired when he complained of such. The United States District Court for the Northern District of Illinios, Eastern Division entered judgement in favor of plaintiff and an award of $25,000 for indignity and stress, backpay for three years and prejudgement interest in the amount of $134,000, less amount recieved from unemployment insurance and attorneys' fees.

Seventh Circuit affirmed judgement in part and remanded case with directions, and this court also referenced contentions of Congress regarding Title VII:

* "... the federal rule treats civil rights cases (and other federal question) plaintiff's less generously than plaintiff's in cases under state law, and it is hard to understand why this should be so and how it could be consistent with 42 U.S.C. § 1988, which provides that 'in all cases where [federal civil rights laws] are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies..., the common law, as modified and changed by the constitution and statues of the state wherein the court having jurisdiction of such... cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause ...'"

* sec. § 1981 case, plaintiff has right to full common-law damages and to back pay without limit of time, compared to two-year limit on back pay in Title VII. 42 U.S.C.A § 1981; Civil Rights Act of 1964 § 706(g), 42 U.S.C.A § 2000e-5(g).

* Jury verdict would bind judge on factual issues common to section 1981 claim tried to jury and Title VII claim tried simultaneously to judge. 42 U.S.C.A § 1981; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

* Common-law rule not allowing prejudgement interest would be inapplicable if inconsistent with policy of federal law.

* District court did not abuse discretion in not allowing employer to deduct wrongfully discharged employee's unemployment benefits from back pay award..

This section ends cited cases of comparative instances in where plaintiff's have been compensated fully for injuries sustained but are by no means exhausted. Careful evaluation of the circumstances surronding these cases and the evidence presented in each and the simular circumstances surrounding the present petitioner, and the evidence presented in her case, leaves one to wonder if there is, DISCRIMINATION IN THE FEDERAL SYSTEM ITSELF, AND IF THERE ARE ANY SYSTEMATIC TRENDS BY THE COURTS IN THE PETITIONER'S DISIRICT JURISDICTION, TO UNDER THE COLOR OF THE LAW DENY GUARANTEES OF THE CONSTITUTION, AND UNDERMINE THE INTENTIONS OF CONGRESS AND THE LAWS ATTACHED TO SUCH AND DESIGNED TO RECTIFY ANY AND ALL SITUATIONS THAT ARE NOT CONSISTENT TO IT'S PURPOSE, AGAINST ANY PARTICULAR GROUP OF PEOPLE THAT IT HAS BEEN DESIGNED TO PROTECT.

REASONS FOR GRANTING THE WRIT

Title VII, as it was developed by Congress and Legislation, provides that the federal courts formulate remedies that would make victims of illegal discrimination "whole". Congressional and Legislative bodies specifically set out guidelines courts are to follow in order to acheive it's remedial goals, to place to victims in the place they would have occupied if it were not for illegal acts of discrimination.

All federal courts and all circuit courts have a duty to apply

these specific standards according to the facts in the individual cases, to achieve basically the same goals of vindication of the victims, in other words; all courts following the same set of rules to acheieve the same results, regardless of whether the defendant is part of a large entity, who would not want its image tainted with such allegations, or small buisnesses, should not effect the remedial judgements and penalties made against them. It should not matter whether the plaintiff is pro se, or represented by a large law firm, or social status or position in society, effect the right to remedial judgements and compensation for wrongs commited against.

The facts related to violations and remedies for related violations judgements concerning such should be fairly and equally decreed, and consistent amongst the citizens and consistent from state to state, and all should be consistent to the constitution, and the courts should not allow personal prejulices to interfer in the course of their duties.

In the present case, petitioner, has proceeded pro se through said action. Requirements of presenting evidence according to court rules and requirements has been fulfilled, through complettion of trial. She has obtained a verdict in her favor. She has timey requested of the courts her entitled rights pursuant to the appropiate statues and laws that could grant her said relief, but the courts remain a constant barrier

If all said actions have been accomplished, and a court refuses still, a parties federal rights, then equal access to to courts do not truly exist. Then under the "color of law" a party is being denied equal rights, and remains a victim, of not only the original violators, but also a victim to the justice system designed to protect you from such. If this is designed to bar any particular group of people, whether it be on the basis of race or social status, the results are selectivity of those whose will recieve justice and those who will not, and that is not a choice the courts in regards to the citizens can individually make, because it is unconstitutional and goes against everything equal rights were developed for, and requires review of the court, superior, The United States Supreme Court, when the guarentees of the Constitution of the United States are being denied, and Fourteenth Amendment rights that allow for Equal Access to the Courts, the right to represent yourself in

Court, Due Process of the Laws, Equal protection of those Laws, and Equal Benefit of those Laws. If any of the above actions are occurring, the it requires the Supervisory Direction of the Supreme Court.

CONCLUSION

Plaintiff first presented to the courts a number of violations to her federal rights with the belief that the court system would vindicate her fully, her rights as all others simularily situated are vindicated, and make her whole as all others have been made, unsimular circumstances, and placed back into her rightful place as had been others replaced, who are simularily situated, and never imagined the barriers she would be up against, in order to be granted a civil right.

Believe the petitioner when she saids that it is with great reservations that such comments are made within the body of this petition of entities that are erected to guide the common citizen through existence within a group of society, but what other conclusions can be drawn, given the circumstances surrounding this lawsuit, complete flat out denial of a right without any explanation and without cause.

When reviewing comparative cases in sister states and the actions and or inactions of the violators themselves, courts within sister states appear to render judgements within the realms of Title VII and according to the guidelines of Congressional and Legislative boundaries. So what happend in this case? This case warrants investigation of a superior, to ensure that their is not, between courts in the petitioners jurisdiction, a mechanical or systematic endeavor to circumvent and undermine Congressional and Legislative intentions, regarding racial discrimination, and deprive an individual, a group of individuals, a city of individuals, a town of individuals, or a state of individuals of federally protected rights.

One last comment in conclusion, that the plaintiff does not have absolute proof of, but can be reailily proven through contact of the jurors to this cause of actions, but at the conclusion of trial and after jury was sequestered to deliberations, attorney appointed to represent petitioner, told her that the judge was ta-

king the seven members of the jury to lunch. Given the fact that the jury returned such an inadequate verdict, and the fact that the court has consistently refused to follow federal law guidelines in this action, it is reasonable for the petitioner to conclude that if the court was biased in regards to the plaintiff, that this prejulice was passed on to the jury, an action reviewable by superior courts.

Veronica T. Davis

Veronica T. Davis
Pro Se

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50255

VERONICA T. DAVIS,
Plaintiff-Appellee Cross-Appellant,

v.

BAPTIST MEMORIAL HOSPITAL, doing buisness as Baptist Medical Center Hospital,
Defendant-Appellant Cross-Appellee.

Appeals from the United States District Court
for the Western District of Texas, San Antonio

Before HIGGANBOTHAM, SMITH and STEWART, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellant cross-appellee, Baptist Memorial Hospital System, d/b/a Baptist Medical Center Hospital, to dismiss the cross-appeal of appellee, cross-appellant, Veronica T. Davis is GRANTED.

MDT-21 (initials only of all three judges)

(filed Aug. 13, 1996)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50255

VERONICA T. DAVIS,
Plaintiff-Appellee-Cross-Appellant,

v.

BAPTIST MEMORIAL HOSPITAL, doing business as Baptist Medical Center Hospital,
Defendant-Appellant-Cross-Appellee,

ELIVIRA WINN; THOMAS COOPER; MAUREEN DUNN; MONIKA ELDER; MARTHA VASQUEZ; RUBY REED; CALLIE SMITH; MARIA VILLANUEVA,
Defendant-Appellees.

Appeals from the United States District Court for the Western District of Texas, San Antonio

Before HIGGINBOTHAM, SMITH and STEWART, Circuit Judges.

IT IS ORDERED that the motion of appellee, Veronica T. Davis to reinstate the cross-appeal in the above-referenced appeal is DENIED.

IT IS FURTHER ORDERED that appellant's second motion for an extension of time to file the brief, to and including three weeks after the date of this court's ruling on appellee's motion to reinstate the cross-appeal, or until the deadline for appealing this court's dismissal of appellee's cross-appeal expires is DENIED.

(initials only of all three judges)

(two dates indicated for filing)
(filed Nov. 26 1996 and Dec. 9, 1996)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 97-50489
Summary Calendar

VERONICA T. DAVIS,
Plaintiff-Appellant,

VERSUS

BAPTIST MEMORIAL HOSPITAL, doing buisness as
MEDICAL CENTER HOSPITAL, et al,
Defendants,

BAPTIST MEMORIAL HOSPITAL, doing buisness as
BAPTIST MEDICAL CENTER HOSPITAL,
Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Texas
(SA-93-CV-599)

BEFORE WISDOM, WEINER, and DENNIS, Circuit Judges.

PER CURIAM *

Veronica T. Davis sued Baptist Memorial Hospital System, her former employer, and several of its employees for racial discrimination in violation of Title VII of the Civil Rights Act of 1964. Following a jury trial, she recovered $15,000 in punitive damages. On November 13, 1995, both parties filed post-trial motions seeking to amend judgement. Davis specifically requested

* Pursuant to 5TH CIR. R.47.5, the Court has determined that this opinion should not be published and is not precedent except under limited circumstances set forth in 5TH CIR. R. 47.5.4.

(filed Jan. 9, 1998)

the court to invoke its equitable powers to grant an appropiate remedy to compensate her for lost wages, both past and future. On March 28, 1996, the district court denied all post-trial motions except that it granted an award of attorneys' fees. Davis filed a motion to reconsider on April 8, 1996, but that motion was denied on April 30, 1996. Davis filed a notice of appeal on May 8, 1996. This Court dismissed Davis' appeal as untimely on August 13, 1996.

On January 2, 1997, Davis filed more post-trial motions in the district court, seeking equitable relief, an opportunity to reopen her case, and a hearing. We read these motions to be filed under Fed.R.Civ.P. 60(b)(6).[2] The district court denied these motions on May 12, 1997. On June 10, 1997, Davis filed her notice of appeal. We review the district court's denial of Davis' Rule 60(b)(6) motion for abuse of discretion.[3]

We have held on numerous occassions that Rule 60(b) cannot be used as a substitute for a timely appeal.[4] The issues raised by Davis' current motion are substantially the same as those raised in her previous post-trial motions. The district court has already ruled against her, and Davis failed to perfect a timely appeal. Davis cannot revive that previous dispute by merely reasserting those issues in another Rule 60(b) motion.[5]

The district court did not abuse its discretion in denying Davis' motions. The judgement is **AFFIRMED**.

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[2] Davis does not specifically state that she is relying upon this rule. Rule 60(b)(6) is the only possible basis for her motion, however, because that motion was filed after the 10 day time period for a valid Rule 59 motion and it does not qualify under subparts (1)-(5) of Rule 60(b).

[3] Lancaster v Presley, 35 F.3d 229, 231 (5th Cir. 1994).

[4] Id.; Latham v Wells Fargo Bank, 987 F.2d 1199, 1203 (5th Cir. 1993).

[5] See Lancaster, 35 F.3d at 232

s/ no signature

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VERONICA T. DAVIS, Plaintiff,	*	
V.	*	SA-93-CA-599
BAPTIST MEMORIAL HOSPITAL SYSTEM d/b/a BAPTIST MEDICAL CENTER HOSPITAL, Defendant.	*	

ORDER

The Court ordered the case to mediation on October 7, 1994, and recieved word from the mediator on October 28, 1994, that mediation was not sucessful. In a proposed pretrial order submitted by parties on August 11, 1994, Plaintiff requested a bifurcated trial. The Court having reviewed the request, finds that the request is not well taken.

Accordingly, it is ordered that the plaintiff's request for a bifurcated trial be, and the same is hereby, **DENIED.**

IT IS FURTHER ORDERED that the parties and attorneys of record appear in the John Wood, Jr. U.S. Courthouse, 655 E. Durango Blvd., Third Floor, Courtroom Five, San Antonio, Texas 78206, at **9:30 a.m.** on **Monday, May 8, 1995,** for **JURY SELECTION** to be followed by **TRIAL ON THE MERITS.**

SIGNED this 16th day of February, 1995.

s/ D.W. Suttle
D.W. Suttle
Senior United States District Judge.

(filed Feb. 16, 1995)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VERONICA T. DAVIS, Plaintiff,	*	
V.	*	SA-93-CA-599
BAPTIST MEMORIAL HOSPITAL SYSTEM d/b/a BAPTIST MEDICAL CENTER HOSPITAL, Defendant.	*	

ORDER

In conformity with its oral pronouncement from the bench on this same date, the Court hereby orders a mistrial in the above-styled and numbered cause.

Furthermore, the Court finds that its impartiality might be reasonably questioned. see 28 U.S.C. §§ 144 and 455(a).

Accordingly, the Court disqualifies itself from this case, and returns it to the District Clerk for reassignment.

SIGNED this 9th day of May, 1995.

s/ D.W. Suttle
D.W. Suttle
Senior United States District Judge.

(filed May 9th, 1995)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VERONICA T. DAVIS, Plaintiff,	*	
V.	*	SA-93-CA-599
BAPTIST MEMORIAL HOSPITAL SYSTEM, d/b/a BAPTIST MEDICAL CENTER HOSPITAL, Defendant.	*	

ORDER

In accordance with the verdict of the jury, it is hereby ORDERED, ADJUDGED, and DECREED that the plaintiff recover from the Defendant the sum of $15,000 (fifteen thousand dollars). Costs are assessed against the Defendant.

SIGNED this 27th day of October, 1995.

s/ H.F. Garcia
H.F. Garcia
United States District Judge

(filed Oct. 27, 1995)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VERONICA T. DAVIS, Plaintiff,	*	
V.	*	SA-93-CA-599
BAPTIST MEMORIAL HOSPITAL SYSTEM d/b/a BAPTIST MEDICAL CENTER HOSPITAL, Defendant.	*	

ORDER

On this day came on to be considered the motion of the plaintiff to alter or amend judgement, or in the alternative, motion for a new trial. The defendant has responded to said motion. Upon consideration, the court is of the opinion that the motion should be DENIED.

The court also has before it the motion of the defendant for judgement, or alternatively, motion for a new trial. The plaintiff has responded to said motion. Upon consideration, the court is of the opinion that the motion should be DENIED.

IT IS THEREFORE ORDERED that the post-judgement motions of the parties, save the plaintiff's motion for attorneys' fees, which is addressed by separate order, are hereby DENIED.

SIGNED this day of March, 1996.

s/ H.F. Garcia
H.F. Garcia
United States District Judge

(filed March 28, 1996)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VERONICA T. DAVIS, *
Plaintiff, *
*
V. * SA-93-CA-599
*
BAPTIST MEMORIAL HOSPITAL *
SYSTEM d/b/a BAPTIST MEDI- *
CAL CENTER HOSPITAL, *
Defendant. *

ORDER

On this day came on to be considered the plaintiff's motion for attorneys' fees. The objections of the defendant are also before this court. Upon consideration, the court is of the opinion that the motion should be granted to the following extent.

The Supreme Court has emphasized that the basic standard for finding reasonable fees is the determination of reasonable hours and rates. Blum v Stenson, 465 U.S. 886, 897, 104 S. Ct. 1541, 1548, 79 L. Ed. 2d 891 (1984). Hensley v Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983). The party seeking attorneys' fees carries the burden of producing satisfactory evidence that the claimed rate and numbered hours are reasonable. Blum, 465 U.S. at 895 n.11, 104 S. Ct. at 1547 n.11. Hensley, 461 U.S. at 437, 103 S. Ct. at 1941. Attorneys' time records, which ideally reflect appropiate billing judgement, are ordinarily used to determine the number of compensible hours. Alberti v Kevenhagen, 896 F.2d 927, 930, modified, 903 F.2d 352, (5th Cir. 1990). Reasonable fees are to be calculated according to the prevailing market rate in the relevant community. Blum, 465 U.S. at 895, 104 S. Ct. at 1547.

In Hensley v Eckerhart, the Supreme Court held that the extent of the plaintiff's sucess is a crucial factor in determining the proper amount of an award of attorneys' fees. 461 U.S. at 440, 103 S. Ct. at 1943. Texas State Teachers Association v Garland Independent School District, 489 U.S. 782, 790, 109 S. Ct. 1486,

1491-92, 103 L. Ed.2d 866 (1989). A district court may reduce the hours claimed to account for time expended on unsucessful claims. Wyatt v Cole, 928 F.2d 718, 724, (5th Cir. 1991). There is no precise rule or formula for making these determination; the district court may attempt to identify specific hours that should be eliminated or it may reduce the award to account for limited sucess. Hensley v Eckerhart, 461 U.S. at 436-37, 103 S. Ct. at 1941. The applicant bears the burden of establishing entitlement to an award and documenting the appropiate hours expended and hourly rates. Id.

The defendant's primary objections go to fees sought by the associate of Mr. McFarland. The objections are meritorious. The court appointed only Mr. McFarland in this case. A second chair was not deemed necessary. An analysis of the associate's qualifications and necessity on the case has not been adequately substantiated in the motion for attorneys' fees. The fees shall not be awarded.

In determining what award is appropiate, the court is afforded wide discretion. Here, the plaintiff was sucessful in the redress of her grievance. A careful review of the submitted time sheets has been made by the court. The $150.00 billing rate of plaintiff's attorney is reasonable and within the range of customary fees charged by federal civil litigators in the Western District of Texas. The court finds that 92 hours of time was necessarily and reasonably spent in the prosecution and trial of this cause. Accordingly, the motion for attorneys' fees should be and is hereby GRANTED in the amount of $13,800 (thirteen thousand and eight hundred dollars).

So ordered this 28th day of March, 1996.

s/ H.F. Garcia
H.F. Garcia
United States District Judge

(filed March 28, 1996)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VERONICA T. DAVIS, Plaintiff,	*	
V.	*	SA-93-CA-599
BAPTIST MEMORIAL HOSPITAL SYSTEM d/b/a BAPTIST MEDICAL CENTER HOSPITAL, Defendant.	*	

ORDER

Came on this day for consideration Plaintiff's Motion to the Court for consideration or reconsideration of Front Pay Awards ("Motion") in connection with the above-reference matter. After due consideration of Plaintiff's Motion, Defendant's response thereto and the evidence and other matters at trial, this Court is of the opinion that Plaintiff's Motion is not meritorious and should be in all things DENIED.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff's Motion is in all things DENIED.

Signed this 30th day of April, 1996.

67788

s/ H.F. Garcia
H.F. Garcia
United States District Judge

(filed April 30, 1996)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VERONICA T. DAVIS, Plaintiff,	*	
V.	*	SA-93-CA-599
BAPTIST MEMORIAL HOSPITAL SYSTEM d/b/a BAPTIST MEDICAL CENTER HOSPITAL, Defendant.	*	

ORDER

On this day came on to be considered the various motions filed by the plaintiff. Upon consideration, the Court is of the opinion that motions requesting a hearing to present oral arguments, to vacate stay order, to reopen case, and for equitable relief are hereby DENIED.

So ORDERED this 12th day of May, 1997.

s/ H.F. Garcia
H.F. Garcia
United States District Judge

(filed May 12, 1997)